

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION (at Cincinnati)

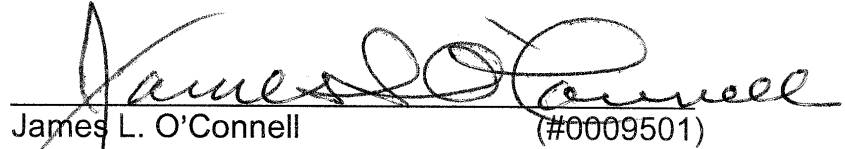
STEVEN D. KING	:	Civil Action No. C-1-01-802
	:	
Plaintiff,	:	(Judge Herman J. Weber)
	:	(Magistrate Timothy S. Hogan)
v.	:	
	:	
CSX TRANSPORTATION, INC.	:	<b>MEMORANDUM OF DEFENDANT</b>
	:	<b>WITH RESPECT TO DEPOSITION OF</b>
	:	<b>DR. JOHN D. BEVER</b>
Defendant.	:	

Now comes the defendant and hereby and herewith advises the Court and counsel for the plaintiff that, if the plaintiff presents any part of the videotape deposition of Dr. John D. Bever, taken on July 14, 2003, the defendant will present to the jury the cross-examination and recross-examination of the witness appearing on pages 31-44 and 46-47 of the transcript of that deposition.

The defendant also advises the Court and counsel for the plaintiff of its position with respect to objections lodged by the defendant during the course of the said deposition, as follows:

p. 28, l. 22	Withdrawn.
p. 29, l. 4	Withdrawn.
p. 29, ll. 16 and 25	Pursued – insufficient foundation, including lack of knowledge of the physical requirements of a locomotive engineer.
p. 45, l. 1	Withdrawn.
p. 45, l. 19	Pursued – no information was provided to the witness as to what climbing was involved, that is, whether steps or ladders are involved, the number of rungs or steps and the steepness thereof. In addition, the question is leading.

Respectfully submitted,



James L. O'Connell (#0009501)

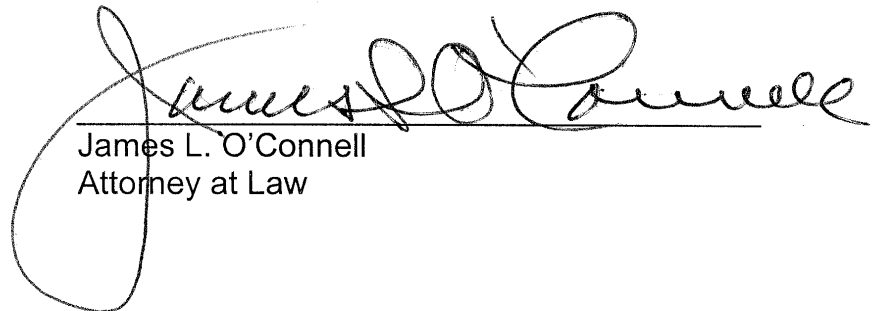
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OF COUNSEL:

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon: **Robert E. Harrington, Jr. and Daniel W. Pisani**, HARRINGTON, THOMPSON, ACKER & HARRINGTON, LTD., 310 South Michigan Avenue, Suite 2000, Chicago, Illinois 60604, and **Charles J. Davis**, PATSFALL, YEAGER & PFLUM, 1800 Fourth & Vine Tower, One West Fourth Street, Cincinnati, Ohio 45202, by ordinary U.S. mail, this 26th day of September, 2003.



James L. O'Connell  
Attorney at Law